

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

BAY STATE GAS COMPANY Petition for Authority to Recover Exogenous Costs Associated with Lost Base Revenues))))))	D.T.E. 03-36
--	----------------------------	--------------

**MOTION OF BAY STATE GAS COMPANY
FOR PROTECTIVE TREATMENT**

NOW COMES Bay State Gas Company (“Bay State”) and respectfully requests that the Department of Telecommunications and Energy (“Department”) grant it protection from public disclosure over certain confidential, competitively sensitive and proprietary information submitted in this proceeding and in accordance with G.L. c. 25, sec. 5D, of the Bay State Gas Residential Energy Efficiency Services Request for Proposals (“Bay State RFP”), dated October 9, 2002, contained as Attachment DTE-RR-5(a) (Confidential) to the Bay State’s response to DTE-RR-5. The information contained in Attachment DTE-RR-5(a) supports Bay State’s response to a record request asked of Mr. Stephen Bryant by the Department during hearings on September 9, 2003.

1. The Bay State RFP is contained as an attachment to DTE-RR-5.
2. Bay State’s RFP is used to solicit proposals from qualified vendors to provide administrative and auditing services for delivery of its Residential Energy Efficiency Programs, including its Partners in Energy Program, providing energy efficiency services to nearly 250,000 customers in Massachusetts.
3. Bay State has consistently sought confidentiality over its RFP for energy efficiency services. The Bay State RFP obtains operational support through the

Administrative and Auditing Contractor selected as a result of the Bay State RFP. Bay State's Energy Efficiency Program design contains proprietarily designed programs, input assumptions, and potential program savings that may affect the bid prices solicited in future Bay State RFP processes. The Energy Efficiency Program also includes Bay State-developed proprietary software that is used to run the programs.

4. In addition, the Bay State RFP includes a budget detail that divulges internal demand-side management departmental procedures and external alliance sources, to the extent required for the bidder to understand the process. The Bay State RFP also includes a description of past program performance in summary format. The format and, more importantly, the content are proprietary to Bay State's business operations.

5. Because the Bay State RFP constitutes confidential, proprietary and competitively sensitive business information, and cannot be extracted from Attachment DTE-RR-5(a), Bay State seeks protection for Attachment DTE-RR-5(a) consistent with the protection commonly granted competitive RFPs. Protection for this information is appropriate pursuant to Chapter 25, section 5D of the General Laws of Massachusetts.

6. G.L. c. 25, sec. 5D is specifically designed to protect against disclosure of competitively sensitive information. That provision, in part, provides

[T]he [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection. Where such a need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

G.L. c. 25, sec. 5D. In determining the existence and extent of such need, the Department must consider the presumption in favor of disclosure and the specific reasons why disclosure of the disputed information benefits the public interest. Berkshire Gas Co., D.P.U. 93-187/188/189/190 at 16 (1994). The utility must show need by a specific factual demonstration. Id.

7. The Department has previously granted protective orders over pricing information in order to avoid informing the market of distribution company pricing strategy and results from negotiations, which if divulged, could weaken a utility's bargaining position and potentially increase the cost of procuring supplies for Bay State and its customers. See, e.g. Colonial Gas Co., D.P.U. 96-18 at 4 (1996) (protected pricing terms in gas supply contract, including all reservation fees and demand charges, commodity charges and other pricing information). This same reasoning is applicable to energy efficiency programs and solicitations.

8. Disclosure of the Bay State RFP in Attachment DTE-RR-5(a) (Confidential) may jeopardize Bay State's current and future negotiations to obtain the lowest pricing for its energy efficiency operational services. This confidential, commercially sensitive and proprietary information is the type of information the Department may protect from public disclosure pursuant to G.L. c. 25, sec. 5D and is the type of information that the Department has previously recognized is appropriate for protection.

WHEREFORE, Bay State Gas Company respectfully requests that the Department of Telecommunications and Energy grant its Motion for Protective

Treatment as stated herein, and protect from public disclosure Attachment DTE-RR-5(a), its Request for Proposals for Energy Efficiency Services, that contains confidential information relative to Bay State Gas Company's energy efficiency programs, as well as their budgeting, costing and solicitation processes.

Respectfully submitted,

BAY STATE GAS COMPANY

By its attorney,

Patricia M. French
Senior Attorney
NISOURCE CORPORATE SERVICES
300 Friberg Parkway
Westborough, MA 01581
(508) 836-7394
fax (508) 836-7039

DATED: September 22, 2003